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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09-639,868	08/16/2000	Paul R. Weber	1A0013.CP2	3205

7590 05/30/2002

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EXAMINEE

BUSHEY, CHARLES S

ART UNIT	PAPER NUMBER
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1724

DATE MAILED: 05/30/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/639,868

Applicant(s)

WEBER ET AL

Examiner

Scott Bushey

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 August 2000 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☒ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_ 6) ☐ Other:

## DETAILED ACTION

### *Oath/Declaration*

1. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:  
Applicant has not complied with the requirements of 37 CFR 1.63(c), since the oath or declaration does not acknowledge the filing of the respective parent and grandparent CIP applications 09/079,683, filed May 15, 1998 and 08/987,395, filed December 9, 1997, under the section designated for the claiming of domestic priority under *35 U.S.C. 120*. A new oath or declaration is required in the body of which the present application should be identified by application number and filing date.

### *Specification*

2. The disclosure is objected to because of the following informalities: 1) on page 2, before the first line applicant should insert the heading, --REFERENCE TO RELATED APPLICATIONS--; 2) page 2, lines 1-3 should be replaced by --The present application is a CIP of co-pending U.S. application 09/079,683, filed May 15, 1998, now U.S. Patent No. 6,220,047, which is a CIP of 08/987,395, filed December 9, 1997, now U.S. Patent No. 6,163,095.--; 3) page 2, line 18, "09/079,063" should be replaced by --09/079,683--; 4) page 15, line 3, applicant should update the status of the cited co-pending application; 5) page 20, line 14, "or358" should be replaced by --or 358--; 6) page 25, line 18, reference numeral "613" does not appear in the drawings; 7) page 25, line 24, "Disk 224" should be replaced by --Disk 610--; 8) page 28, on the penultimate line, "region t the" should be replaced by --region to the--.

Appropriate correction is required.

*Drawings*

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign mentioned in the description: 613, as mentioned at page 25, line 18 of the specification. **A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.**

4. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "244" has been used to designate both the carbonator bottle and the fluid inlet in Figure 16 of the drawings. Apparently the leftmost occurrence of numeral 244 should be replaced by 224, which is referred to throughout the instant specification as designating the carbonating bottle. **A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.**

*Claim Rejections - 35 USC § 112*

5. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, line 3, applicant should insert a comma after "top end". Also, in claim 1, lines 5-6, the phrase "source the liquid" should be replaced by --source of the liquid--. Finally, on the last line of the claim "have" should be replaced by --having--.

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*Claim Rejections - 35 USC § 103*

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

8. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brusa taken together with any one of Dean, Hudson, Austin et al, Iannelli, and Gupta et al.

Brusa (The Figure; col. 2, lines 18-47) substantially discloses applicant's invention as recited by instant claim 1, except for the specific disclosure that the gas inlet has a diffuser attached thereto. It is noted that providing such a diffuser on a gas inlet within a carbonating apparatus is notoriously well known within the art. Evidence of the notorious nature of such basic knowledge is provided by any one of Dean (note 40 in Fig. 4; col. 3, lines 31-40), Hudson (note 74 in Fig. 1; col. 2, lines 39-55), Austin et al (note 38 in Fig. 1; col. 2, lines 38-40, 65-66), Iannelli (note 87a in Fig. 1; col. 3, lines 43-50), and Gupta et al (note 24 in Fig. 5; col. 5, lines 37-38), taken alternatively. It would have been obvious for an artisan at the time of the

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invention, to provide the gas inlet as taught by Brusa with a diffuser outlet, in view of any one of the alternative secondary references, since such would provide a finely divided gas stream in the form of tiny bubbles, which is well known to facilitate placement of a higher percentage of the gas into solution than a simple pipe outlet that is prone to delivery of large bubbles, which larger bubbles do not easily enter into solution within the liquid due to there higher buoyancy and smaller surface area per volume of gas.

*Conclusion*


9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott Bushey whose telephone number is (703) 308-3581. The examiner can normally be reached on Monday-Thursday 6:30AM-5 00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A. Simmons can be reached on (703) 308-1972. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-7718 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

Scott Bushey  
Primary Examiner  
Art Unit 1724

  
4-30-02

csb  
April 30, 2002